

AMENDED IN ASSEMBLY MAY 11, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 765

Introduced by Assembly Members Caballero and Ruskin

February 26, 2009

An act to amend ~~Sections 17052.12 and 23609~~ *Section 17059* of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 765, as amended, Caballero. ~~Income and corporation taxes: credits: research. Income tax credit: purchase: principal residence.~~

The Personal Income Tax Law authorizes a credit against the taxes imposed by that law in an amount equal to the lesser of 5% of the purchase price or \$10,000 in the case of the purchase of a qualified principal residence on and after March 1, 2009, and before March 1, 2010, but not to exceed an aggregate limitation of \$100,000,000 for all credits allowable.

This bill would extend the credit to purchases made on or after March 1, 2009, and before December 1, 2010, would specify that the purchases are required to be pursuant to an enforceable contract, and would increase the aggregate credit limitation to \$300,000,000, as provided.

This bill would take effect immediately as a tax levy.

~~The Personal Income Tax Law and the Corporation Tax Law, by reference to a specified federal statute, allow a credit against taxes imposed by those laws for increasing research expenses, as defined. In general, the amount of the credit under both laws is equal to 15% of the excess of the qualified research expenses, as defined, for the taxable year over the base amount, as defined, and, in addition, for purposes of~~

~~the Corporation Tax Law, 24% of the basic research payments, as defined. The term “base amount” means the product of the average annual gross receipts of the taxpayer for each of the specified years preceding the taxable year and the fixed-base percentage, as defined, but in no event less than 50% of the qualified research expenses for the taxable year.~~

~~This bill would increase those credits, as provided.~~

~~This bill would take effect immediately as a tax levy.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 17059 of the Revenue and Taxation Code*
2 *is amended to read:*

3 17059. (a) (1) In the case of any taxpayer who purchases a
4 qualified principal residence on and after March 1, 2009, and before
5 ~~March~~ *December 1, 2010*, there shall be allowed as a credit against
6 the “net tax,” as defined in Section 17039, an amount equal to the
7 lesser of 5 percent of the purchase price of the qualified principal
8 residence or ten thousand dollars (\$10,000). *Purchases occurring*
9 *after March 1, 2010, and prior to December 1, 2010, must be*
10 *pursuant to an enforceable contract to purchase the qualified*
11 *principal residence executed prior to March 1, 2010.*

12 (2) The amount of any credit allowed under paragraph (1) shall
13 be applied in equal amounts over the three successive taxable years
14 beginning with the taxable year in which the purchase of the
15 qualified principal residence is made.

16 (3) The credit under this section shall be allowed for the
17 purchase of only one qualified principal residence with respect to
18 any taxpayer.

19 (4) *A taxpayer may, but is not required to, reserve a credit prior*
20 *to close of escrow. To reserve a credit, the taxpayer and seller*
21 *shall jointly sign and submit to the Franchise Tax Board a*
22 *certification that they have entered into the agreement on or after*
23 *March 1, 2009, and before March 1, 2010. Upon receipt of the*
24 *joint certification, the Franchise Tax Board shall notify the*
25 *taxpayer that the board has conditionally reserved the credit for*
26 *the taxpayer.*

1 (b) (1) For purposes of this section, “qualified principal
2 residence” means a single-family residence, whether detached or
3 attached, that has never been occupied, that is purchased to be the
4 principal residence of the taxpayer for a minimum of two years
5 and is eligible for the homeowner’s exemption under Section 218.

6 (2) No credit shall be allowed under this section unless the
7 taxpayer submits with his or her tax return a certification by the
8 seller of the qualified principal residence that the residence has
9 never been previously occupied. The seller shall provide the
10 certification to the taxpayer and to the Franchise Tax Board within
11 one week of the ~~sale~~ *close of escrow* of the qualified principal
12 residence.

13 (3) If the taxpayer does not occupy the qualified principal
14 residence as his or her principal residence for at least two years
15 immediately following the purchase the credit shall be canceled,
16 and the taxpayer shall be liable for any credit allowed under this
17 section on previous tax returns.

18 (c) (1) In the case of two married taxpayers filing separately,
19 the credit allowed under subdivision (a) shall be equally
20 apportioned between the two taxpayers.

21 (2) If two or more taxpayers who are not married purchase a
22 qualified principal residence, the amount of the credit allowed
23 under subdivision (a) shall be allocated among the taxpayers in
24 the same manner as each taxpayer’s percentage of ownership,
25 except that the total amount of the credits allowed to all of these
26 taxpayers shall not exceed ten thousand dollars (\$10,000).

27 (d) The total amount of credit that may be allowed pursuant to
28 this section shall not exceed ~~one~~ *three* hundred million dollars
29 (~~\$100,000,000~~) (*\$300,000,000*).

30 (e) (1) Upon receipt of the certification from the seller, as
31 described in paragraph (2) of subdivision (b), the Franchise Tax
32 Board shall allocate the credit to the taxpayer on a first-come,
33 first-served basis.

34 (2) The taxpayer shall claim the credit on a timely filed original
35 return.

36 (3) The date a certification is received shall be determined by
37 the Franchise Tax Board.

38 (4) (A) The determinations of the Franchise Tax Board with
39 respect to the date a certification is received, and whether a return

1 has been timely filed for purposes of this subdivision, may not be
2 reviewed in any administrative or judicial proceeding.

3 (B) Any disallowance of a credit claimed due to a determination
4 under this subdivision, including the application of the limitation
5 specified in paragraph (1), shall be treated as a mathematical error
6 appearing on the return. Any amount of tax resulting from that
7 disallowance may be assessed by the Franchise Tax Board in the
8 same manner as provided by Section 19051.

9 (f) The Franchise Tax Board may prescribe rules, guidelines,
10 or procedures necessary or appropriate to carry out the purposes
11 of this section, including any guidelines regarding the allocation
12 of the credit allowed under this section. Chapter 3.5 (commencing
13 with Section 11340) of Part 1 of Division 3 of Title 2 of the
14 Government Code does not apply to any rule, guideline, or
15 procedure prescribed by the Franchise Tax Board pursuant to this
16 section.

17 (g) The credit allowed by this section is not a business credit
18 within the meaning of Section 17039.2.

19 (h) *The amendments to this section by the act adding this*
20 *sentence shall apply to purchases occurring on or after March 1,*
21 *2009, and before December 1, 2010.*

22 (i) This section shall remain in effect only until December 1,
23 2013, and as of that date is repealed.

24 *SEC. 2. This act provides for a tax levy within the meaning of*
25 *Article IV of the Constitution and shall go into immediate effect.*

26 ~~SECTION 1. Section 17052.12 of the Revenue and Taxation~~
27 ~~Code is amended to read:~~

28 ~~17052.12. For each taxable year beginning on or after January~~
29 ~~1, 1987, there shall be allowed as a credit against the "net tax" (as~~
30 ~~defined by Section 17039) for the taxable year an amount~~
31 ~~determined in accordance with Section 41 of the Internal Revenue~~
32 ~~Code, except as follows:~~

33 ~~(a) For each taxable year beginning before January 1, 1997, the~~
34 ~~reference to "20 percent" in Section 41(a)(1) of the Internal~~
35 ~~Revenue Code is modified to read "8 percent."~~

36 ~~(b) (1) For each taxable year beginning on or after January 1,~~
37 ~~1997, and before January 1, 1999, the reference to "20 percent"~~
38 ~~in Section 41(a)(1) of the Internal Revenue Code is modified to~~
39 ~~read "11 percent."~~

1 ~~(2) For each taxable year beginning on or after January 1, 1999,~~
2 ~~and before January 1, 2000, the reference to “20 percent” in Section~~
3 ~~41(a)(1) of the Internal Revenue Code is modified to read “12~~
4 ~~percent.”~~

5 ~~(3) For each taxable year beginning on or after January 1, 2000,~~
6 ~~the reference to “20 percent” in Section 41(a)(1) of the Internal~~
7 ~~Revenue Code is modified to read “15 percent.”~~

8 ~~(4) For each taxable year beginning on or after January 1, 2011,~~
9 ~~and before January 1, 2012, both of the following shall apply:~~

10 ~~(A) The reference to “20 percent” in Section 41(a)(1) of the~~
11 ~~Internal Revenue Code is modified to read “16.25 percent.”~~

12 ~~(B) The reference to “20 percent” in Section 41(a)(2) of the~~
13 ~~Internal Revenue Code is modified to read “24 percent.”~~

14 ~~(5) For each taxable year beginning on or after January 1, 2012,~~
15 ~~and before January 1, 2013, both of the following shall apply:~~

16 ~~(A) The reference to “20 percent” in Section 41(a)(1) of the~~
17 ~~Internal Revenue Code is modified to read “17.50 percent.”~~

18 ~~(B) The reference to “20 percent” in Section 41(a)(2) of the~~
19 ~~Internal Revenue Code is modified to read “24 percent.”~~

20 ~~(6) For each taxable year beginning on or after January 1, 2013,~~
21 ~~and before January 1, 2014, both of the following shall apply:~~

22 ~~(A) The reference to “20 percent” in Section 41(a)(1) of the~~
23 ~~Internal Revenue Code is modified to read “18.75 percent.”~~

24 ~~(B) The reference to “20 percent” in Section 41(a)(2) of the~~
25 ~~Internal Revenue Code is modified to read “24 percent.”~~

26 ~~(7) For each taxable year beginning on or after January 1, 2014,~~
27 ~~both of the following shall apply:~~

28 ~~(A) The reference to “20 percent” in Section 41(a)(1) of the~~
29 ~~Internal Revenue Code shall apply.~~

30 ~~(B) The reference to “20 percent” in Section 41(a)(2) of the~~
31 ~~Internal Revenue Code is modified to read “24 percent.”~~

32 ~~(c) Section 41(a)(2) of the Internal Revenue Code, relating to~~
33 ~~basic research payments, shall not apply.~~

34 ~~(d) “Qualified research” shall include only research conducted~~
35 ~~in California.~~

36 ~~(e) In the case where the credit allowed under this section~~
37 ~~exceeds the “net tax,” the excess may be carried over to reduce~~
38 ~~the “net tax” in the following year, and succeeding years if~~
39 ~~necessary, until the credit has been exhausted.~~

~~(f) (1) With respect to any expense paid or incurred after the operative date of Section 6378, Section 41(b)(1) of the Internal Revenue Code is modified to exclude from the definition of “qualified research expense” any amount paid or incurred for tangible personal property that is eligible for the exemption from sales or use tax provided by Section 6378.~~

~~(2) For each taxable year beginning on or after January 1, 1998, the reference to “Section 501(a)” in Section 41(b)(3)(C) of the Internal Revenue Code, relating to contract research expenses, is modified to read “this part or Part 11 (commencing with Section 23001).”~~

~~(g) (1) For each taxable year beginning on or after January 1, 2000:~~

~~(A) The reference to “2.65 percent” in Section 41(c)(4)(A)(i) of the Internal Revenue Code is modified to read “one and forty-nine hundredths of one percent.”~~

~~(B) The reference to “3.2 percent” in Section 41(c)(4)(A)(ii) of the Internal Revenue Code is modified to read “one and ninety-eight hundredths of one percent.”~~

~~(C) The reference to “3.75 percent” in Section 41(c)(4)(A)(iii) of the Internal Revenue Code is modified to read “two and forty-eight hundredths of one percent.”~~

~~(2) Section 41(c)(4)(B) shall not apply and in lieu thereof an election under Section 41(c)(4)(A) of the Internal Revenue Code may be made for any taxable year of the taxpayer beginning on or after January 1, 1998. That election shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Franchise Tax Board.~~

~~(3) Section 41(c)(6) of the Internal Revenue Code, relating to gross receipts, is modified to take into account only those gross receipts from the sale of property held primarily for sale to customers in the ordinary course of the taxpayer’s trade or business that is delivered or shipped to a purchaser within this state, regardless of f.o.b. point or any other condition of the sale.~~

~~(h) Section 41(h) of the Internal Revenue Code, relating to termination, shall not apply.~~

~~(i) Section 41(g) of the Internal Revenue Code, relating to special rule for passthrough of credit, is modified by each of the following:~~

~~(1) The last sentence shall not apply.~~

1 ~~(2) If the amount determined under Section 41(a) of the Internal~~
2 ~~Revenue Code for any taxable year exceeds the limitation of~~
3 ~~Section 41(g) of the Internal Revenue Code, that amount may be~~
4 ~~carried over to other taxable years under the rules of subdivision~~
5 ~~(e); except that the limitation of Section 41(g) of the Internal~~
6 ~~Revenue Code shall be taken into account in each subsequent~~
7 ~~taxable year.~~

8 ~~SEC. 2. Section 23609 of the Revenue and Taxation Code is~~
9 ~~amended to read:~~

10 ~~23609. For each taxable year beginning on or after January 1,~~
11 ~~1987, there shall be allowed as a credit against the "tax" (as defined~~
12 ~~by Section 23036) an amount determined in accordance with~~
13 ~~Section 41 of the Internal Revenue Code, except as follows:~~

14 ~~(a) For each taxable year beginning before January 1, 1997,~~
15 ~~both of the following modifications shall apply:~~

16 ~~(1) The reference to "20 percent" in Section 41(a)(1) of the~~
17 ~~Internal Revenue Code is modified to read "8 percent."~~

18 ~~(2) The reference to "20 percent" in Section 41(a)(2) of the~~
19 ~~Internal Revenue Code is modified to read "12 percent."~~

20 ~~(b) (1) For each taxable year beginning on or after January 1,~~
21 ~~1997, and before January 1, 1999, both of the following~~
22 ~~modifications shall apply:~~

23 ~~(A) The reference to "20 percent" in Section 41(a)(1) of the~~
24 ~~Internal Revenue Code is modified to read "11 percent."~~

25 ~~(B) The reference to "20 percent" in Section 41(a)(2) of the~~
26 ~~Internal Revenue Code is modified to read "24 percent."~~

27 ~~(2) For each taxable year beginning on or after January 1, 1999,~~
28 ~~and before January 1, 2000, both of the following shall apply:~~

29 ~~(A) The reference to "20 percent" in Section 41(a)(1) of the~~
30 ~~Internal Revenue Code is modified to read "12 percent."~~

31 ~~(B) The reference to "20 percent" in Section 41(a)(2) of the~~
32 ~~Internal Revenue Code is modified to read "24 percent."~~

33 ~~(3) For each taxable year beginning on or after January 1, 2000,~~
34 ~~both of the following shall apply:~~

35 ~~(A) The reference to "20 percent" in Section 41(a)(1) of the~~
36 ~~Internal Revenue Code is modified to read "15 percent."~~

37 ~~(B) The reference to "20 percent" in Section 41(a)(2) of the~~
38 ~~Internal Revenue Code is modified to read "24 percent."~~

39 ~~(4) For each taxable year beginning on or after January 1, 2011,~~
40 ~~and before January 1, 2012, both of the following shall apply:~~

- 1 (A) The reference to “20 percent” in Section 41(a)(1) of the
2 Internal Revenue Code is modified to read “16.25 percent.”
- 3 (B) The reference to “20 percent” in Section 41(a)(2) of the
4 Internal Revenue Code is modified to read “24 percent.”
- 5 (5) For each taxable year beginning on or after January 1, 2012,
6 and before January 1, 2013, both of the following shall apply:
- 7 (A) The reference to “20 percent” in Section 41(a)(1) of the
8 Internal Revenue Code is modified to read “17.50 percent.”
- 9 (B) The reference to “20 percent” in Section 41(a)(2) of the
10 Internal Revenue Code is modified to read “24 percent.”
- 11 (6) For each taxable year beginning on or after January 1, 2013,
12 and before January 1, 2014, both of the following shall apply:
- 13 (A) The reference to “20 percent” in Section 41(a)(1) of the
14 Internal Revenue Code is modified to read “18.75 percent.”
- 15 (B) The reference to “20 percent” in Section 41(a)(2) of the
16 Internal Revenue Code is modified to read “24 percent.”
- 17 (7) For each taxable year beginning on or after January 1, 2014,
18 both of the following shall apply:
- 19 (A) The reference to “20 percent” in Section 41(a)(1) of the
20 Internal Revenue Code shall apply:
- 21 (B) The reference to “20 percent” in Section 41(a)(2) of the
22 Internal Revenue Code is modified to read “24 percent.”
- 23 (e) (1) With respect to any expense paid or incurred after the
24 operative date of Section 6378, Section 41(b)(1) of the Internal
25 Revenue Code is modified to exclude from the definition of
26 “qualified research expense” any amount paid or incurred for
27 tangible personal property that is eligible for the exemption from
28 sales or use tax provided by Section 6378.
- 29 (2) “Qualified research” and “basic research” shall include only
30 research conducted in California.
- 31 (d) The provisions of Section 41(e)(7)(A) of the Internal
32 Revenue Code, shall be modified so that “basic research,” for
33 purposes of this section, includes any basic or applied research
34 including scientific inquiry or original investigation for the
35 advancement of scientific or engineering knowledge or the
36 improved effectiveness of commercial products, except that the
37 term does not include any of the following:
- 38 (1) Basic research conducted outside California.
- 39 (2) Basic research in the social sciences, arts, or humanities.

1 ~~(3) Basic research for the purpose of improving a commercial~~
2 ~~product if the improvements relate to style, taste, cosmetic, or~~
3 ~~seasonal design factors.~~

4 ~~(4) Any expenditure paid or incurred for the purpose of~~
5 ~~ascertaining the existence, location, extent, or quality of any deposit~~
6 ~~of ore or other mineral (including oil and gas).~~

7 ~~(e) (1) In the case of a taxpayer engaged in any~~
8 ~~biopharmaceutical research activities that are described in codes~~
9 ~~2833 to 2836, inclusive, or any research activities that are described~~
10 ~~in codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard~~
11 ~~Industrial Classification (SIC) Manual published by the United~~
12 ~~States Office of Management and Budget, 1987 edition, or any~~
13 ~~other biotechnology research and development activities, the~~
14 ~~provisions of Section 41(e)(6) of the Internal Revenue Code shall~~
15 ~~be modified to include both of the following:~~

16 ~~(A) A qualified organization as described in Section~~
17 ~~170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an~~
18 ~~institution of higher education as described in Section 3304(f) of~~
19 ~~the Internal Revenue Code.~~

20 ~~(B) A charitable research hospital owned by an organization~~
21 ~~that is described in Section 501(c)(3) of the Internal Revenue Code,~~
22 ~~is exempt from taxation under Section 501(a) of the Internal~~
23 ~~Revenue Code, is not a private foundation, is designated a~~
24 ~~“specialized laboratory cancer center,” and has received Clinical~~
25 ~~Cancer Research Center status from the National Cancer Institute.~~

26 ~~(2) For purposes of this subdivision:~~

27 ~~(A) “Biopharmaceutical research activities” means those~~
28 ~~activities that use organisms or materials derived from organisms,~~
29 ~~and their cellular, subcellular, or molecular components, in order~~
30 ~~to provide pharmaceutical products for human or animal~~
31 ~~therapeutics and diagnostics. Biopharmaceutical activities make~~
32 ~~use of living organisms to make commercial products, as opposed~~
33 ~~to pharmaceutical activities that make use of chemical compounds~~
34 ~~to produce commercial products.~~

35 ~~(B) “Other biotechnology research and development activities”~~
36 ~~means research and development activities consisting of the~~
37 ~~application of recombinant DNA technology to produce~~
38 ~~commercial products, as well as research and development~~
39 ~~activities regarding pharmaceutical delivery systems designed to~~

1 provide a measure of control over the rate, duration, and site of
2 pharmaceutical delivery.

3 (f) In the case where the credit allowed by this section exceeds
4 the “tax,” the excess may be carried over to reduce the “tax” in
5 the following year, and succeeding years if necessary, until the
6 credit has been exhausted.

7 (g) For each taxable year beginning on or after January 1, 1998,
8 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
9 Internal Revenue Code, relating to contract research expenses, is
10 modified to read “this part or Part 10 (commencing with Section
11 17001).”

12 (h) (1) For each taxable year beginning on or after January 1,
13 2000:

14 (A) The reference to “2.65 percent” in Section 41(c)(4)(A)(i)
15 of the Internal Revenue Code is modified to read “one and
16 forty-nine hundredths of one percent.”

17 (B) The reference to “3.2 percent” in Section 41(c)(4)(A)(ii) of
18 the Internal Revenue Code is modified to read “one and
19 ninety-eight hundredths of one percent.”

20 (C) The reference to “3.75 percent” in Section 41(c)(4)(A)(iii)
21 of the Internal Revenue Code is modified to read “two and
22 forty-eight hundredths of one percent.”

23 (2) Section 41(c)(4)(B) shall not apply and in lieu thereof an
24 election under Section 41(c)(4)(A) of the Internal Revenue Code
25 may be made for any taxable year of the taxpayer beginning on or
26 after January 1, 1998. That election shall apply to the taxable year
27 for which made and all succeeding taxable years unless revoked
28 with the consent of the Franchise Tax Board.

29 (3) Section 41(c)(6) of the Internal Revenue Code, relating to
30 gross receipts, is modified to take into account only those gross
31 receipts from the sale of property held primarily for sale to
32 customers in the ordinary course of the taxpayer’s trade or business
33 that is delivered or shipped to a purchaser within this state,
34 regardless of f.o.b. point or any other condition of the sale.

35 (i) Section 41(h) of the Internal Revenue Code, relating to
36 termination, shall not apply.

37 (j) Section 41(g) of the Internal Revenue Code, relating to
38 special rule for passthrough of credit, is modified by each of the
39 following:

40 (1) The last sentence shall not apply.

1 ~~(2) If the amount determined under Section 41(a) of the Internal~~
2 ~~Revenue Code for any taxable year exceeds the limitation of~~
3 ~~Section 41(g) of the Internal Revenue Code, that amount may be~~
4 ~~carried over to other taxable years under the rules of subdivision~~
5 ~~(f), except that the limitation of Section 41(g) of the Internal~~
6 ~~Revenue Code shall be taken into account in each subsequent~~
7 ~~taxable year.~~

8 ~~SEC. 3. This act provides for a tax levy within the meaning of~~
9 ~~Article IV of the Constitution and shall go into immediate effect.~~